

COMMITTEE ON LEGISLATIVE RESEARCH  
OVERSIGHT DIVISION

**FISCAL NOTE**

L.R. No.: 3411-03  
Bill No.: SCS for SB's 607, 602, 615 & 725  
Subject: Public Assistance; Department of Social Services; Drugs and Controlled Substances  
Type: Original  
Date: February 8, 2010

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Bill Summary: This legislation requires drug testing for work-eligible Temporary Assistance for Needy Families applicants and recipients based upon reasonable suspicion.

**FISCAL SUMMARY**

<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND</b>			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
General Revenue	(\$5,269,011 to \$10,564,587)	(\$6,234,785 to \$11,530,361)	(\$6,391,833 to \$11,687,409)
<b>Total Estimated Net Effect on General Revenue Fund</b>	<b>(\$5,269,011 to \$10,564,587)</b>	<b>(\$6,234,785 to \$11,530,361)</b>	<b>(\$6,391,833 to \$11,687,409)</b>

<b>ESTIMATED NET EFFECT ON OTHER STATE FUNDS</b>			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
<b>Total Estimated Net Effect on <u>Other</u> State Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

Numbers within parentheses: ( ) indicate costs or losses.

This fiscal note contains 10 pages.

<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
Federal	\$0	\$0	\$0
<b>Total Estimated Net Effect on <u>All</u> Federal Funds</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

\* Income and costs would net to \$0.

<b>ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)</b>			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
General Revenue	2.8 FTE	2.8 FTE	2.8 FTE
Federal	2.2 FTE	2.2 FTE	2.2 FTE
<b>Total Estimated Net Effect on FTE</b>	<b>5 FTE</b>	<b>5 FTE</b>	<b>5 FTE</b>

☒ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☐ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

<b>ESTIMATED NET EFFECT ON LOCAL FUNDS</b>			
FUND AFFECTED	FY 2011	FY 2012	FY 2013
<b>Local Government</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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## **FISCAL ANALYSIS**

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### ASSUMPTION

#### **Section 208.027:**

Officials from the **Department of Health and Senior Services** and the **Office of Administration-Administrative Hearing Commission** each assume the proposal would have no fiscal impact on their respective agencies.

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

**Oversight** assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

Officials from the **Department of Mental Health (DMH)** states the proposed legislation requires the Department of Social Services (DSS) to refer TANF applicants or TANF recipients who are work-eligible and who test positive for the use of a controlled substance to an appropriate substance abuse treatment program approved by the Division. DMH assumes that it will treat the applicant or recipient and also pay for the services.

The Division does not know the number of TANF clients that will test positive for drugs or the number of those that test positive that will present for treatment. Following are the estimates made by DSS-FSD for SB 607: in September 2009 there were 30,296 adult recipients considered work-eligible and would be required to submit to a drug test. From July 2009 through September 2009 there was a monthly average of 4,909 TANF applications from work-eligible individuals. This calculates to an estimate of 58,908 applicants ( $12 \times 4,909 = 58,908$ ) annually also required to submit to a drug test. An estimated combined total of 89,204 work eligible TANF recipients and

ASSUMPTION (continued)

applicants would be tested. Since the prevalence of drug abuse and addiction in the TANF population is no different from the general population, the Division estimates that of this total 7,127 (7.99%) will possibly test positive for illicit drug use (marijuana, cocaine, heroin, hallucinogens, inhalants, or prescription psychotherapeutics used non-medically). Included in the 7,127 will be 2,498 (2.8%) who have an illicit drug dependence or abuse disorder. (Data source: SAMHSA, Office of Applied Studies, National Survey on Drug Use and Health, 2006 and 2007. <http://www.oas.samhsa.gov/2k7/State/Missouri.htm>)

DMH is currently utilizing all treatment capacity. A significant cost would be incurred if DMH were required to treat all referred applicants/recipients. Treatment costs per person treated in a CSTAR program is \$3,194 total and \$1,144 General Revenue [ $\$3,194 \times 35.82\%$  (blended SFY '10 GR match rate) = \$1,144 General Revenue]. The Division estimates the GR cost to treat these TANF applicants and recipients assumed to test positive will range from \$2,857,712 ( $2,498 \times \$1,144$ ) to \$8,153,288 ( $7,127 \times \$1,144$ ) and the associated Federal match if those individuals testing positive remain eligible for Medicaid assistance. The Division assumes all TANF applicants and recipients testing positive for drug use will remain Medicaid eligible. If all TANF applicants and recipients testing positive for drug use lose Medicaid eligibility the Division estimates the GR cost to treat these TANF applicants and recipients assumed to test positive will range from \$7,978,612 ( $2,498 \times \$3,194$ ) to \$22,763,638 ( $7,127 \times \$3,194$ ).

**Oversight** notes that states can earn the federal medical assistance percentage (FMAP) on Medicaid program expenditures.

Officials from the **Office of the Attorney General (AGO)** assumes that DSS/DLS would defend individual eligibility determinations, but that costs would be incurred by AGO in defending against any challenges to constitutionality of the proposal. AGO assumes that because costs are dependent on the number of cases that may arise, costs are unknown, but are assumed to be under \$100,000. If there is a significant increase in claims over time, the AGO may seek appropriation to adequately represent the Department.

Officials from the **Department of Social Services-Division of Legal Services (DSS/DLS)** states that currently there are approximately 43,715 families consisting of approximately 112,602 individuals receiving Temporary Assistance benefits. Additionally, there are approximately 6,240 applications per month. This number does not reflect how many are new applications and how many are reapplications.

According to Family Support Division, 80% of the applicants or recipients are eligible for employment. Therefore, this legislation would apply to 34,972 families receiving Temporary

ASSUMPTION (continued)

Assistance benefits and 4,992 applicants each month. Regarding the controlled substance drug testing; assuming that 10% of this number is adversely impacted over 3,497 people will be subject to testing with regard to recipients and approximately 499 per month with regard to applicants.

The way the proposed legislation is written FSD cannot declare an applicant or recipient ineligible until after an administrative hearing; this will likely result in a high percentage of hearings. Assuming 40% of the individuals subject to testing object this would result in a minimum of approximately 1,399 additional hearings annually (based on recipients alone). Regarding applicants, there is the potential for an additional 200 hearings per month. With current staff levels this increase could not be absorbed. Additional staff - 4 hearing officers and 1 support staff - would be required, resulting in the need for additional space. This is based on the assumption that the hearing officers hold approximately 900 hearings per year. These numbers could be lower depending on how the provision requiring that the applicant or recipient be eligible for employment is interpreted.

Calculation:

200 applicant hearings per month X 12 months = 2,400 + 1,399 recipient hearings per year = 3,799 total hearings ÷ 900 average hearings per year per hearing officer = 4.22 new hearing officers needed.

A further consideration is the length and complexity of the hearings. In order to make compelling case expert witnesses from Agency, and possibly from Claimant will be called. Qualifying an expert witness is preliminary to any testimony, requiring at least 20-30 minutes per expert. This case will not be completed in 1 hour, which is what is scheduled for each Hearing Officer at this time. Additionally, service on any expert would be required, meaning additional expense, at the very least the cost of service, which is in the \$20-40 per service range, if private process servers are used.

The service on expert and the expert would be required at the Hearing to avoid hearsay and chain of custody objections. (State v. March, 216 S.W. 3rd 663 (Mo., 2007)).

Officials from the **Department of Social Services-Family Support Division (FSD)** assume the FSD would be responsible for conducting drug screening/testing for work-eligible applicants and recipients for Temporary Assistance for Needy Families (TANF) benefits. The FSD expects to procure a private vendor to administer its drug testing program. At a minimum, the contractor would provide the following services: collection of samples, testing, transmitting results, program evaluation, and retention of urine samples.

ASSUMPTION (continued)

In September 2009, there were 38,012 adult recipients of TANF benefits. 7,716 are exempt from work participation. 30,296 adults are considered work-eligible and would be required to submit to a drug test. ( $38,012 - 7,716 = 30,296$ ). Of the 7,716 who are exempt, 2,501 are temporarily disabled, 4,557 have a child under age one, 119 are excluded because of domestic violence, 27 are over age 60, and 512 are two parent families that meet a work exemption.

Based on information provided by the Department of Corrections and Office of Administration, the average cost to drug test a TANF recipient would be \$55.

The yearly cost for FSD to test all work-eligible recipients is \$1,666,280 ( $30,296 \times \$55 = \$1,666,280$ ).

The FSD is also responsible for testing all work-eligible applicants. The FSD received an average of 6,459 applications from July 2009 through September 2009. 24% of the applications are estimated to be exempt from work participation. 76% of the applications are estimated to have a work-eligible individual. ( $6,459 \times 76\% = 4,909$ ).

The average monthly cost for FSD to test all work-eligible applicants is: \$269,995 ( $4,909 \times \$55 = \$269,995$ ).

The average yearly cost for FSD to test all work-eligible applicants is: \$3,239,940 ( $\$269,995 \times 12 = \$3,239,940$ ).

The overall annual cost for FSD to drug test work-eligible recipients and applicants is: \$4,906,220 ( $\$1,666,280 + \$3,239,940 = \$4,906,220$ ).

There would be FAMIS programming costs of \$24,000.

FSD has no way to determine how many of those tested will test positive and be referred to a drug treatment program. Existing FSD staff would be able to manage the increase in job duty as a result of this legislation.

The Department is required to appoint an appropriate protective payee for a child whose parent is deemed ineligible for TANF due to a positive drug test, and the parent refuses to cooperate in establishing the protective payee. This would not affect the number of eligibles. There would not be a fiscal impact to FSD.

ASSUMPTION (continued)

**Oversight** assumes a savings might be realized based on discussions with DSS. The average TANF grant is \$292 for a family of three (a parent and two children). If the parent tested positive and was declared ineligible for TANF benefits the grant would decrease to \$234 and a \$58 savings would be realized. Based on the 7.99% statistic used by the DMH in 2010, resulting in 2,421 parents (30,296 work-eligible recipients X 7.99%), Oversight believes the DSS could have a saving of \$0 to \$1,685,016 (\$58 X 2,421 X 12). Oversight believes any reduction in the savings from suspended recipients coming back onto TANF benefits will be offset by new recipients being ineligible. Based on the 7.99% statistic used by the DMH in 2010, resulting in 392 parents (4,909 work-eligible applicants X 7.99%), Oversight believes the DSS could have a cost avoidance of \$0 to \$272,832 (\$58 X 392 X 12).

<u>FISCAL IMPACT - State Government</u>	FY 2011 (10 Mo.)	FY 2012	FY 2013
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**GENERAL REVENUE FUND**

Savings - Department of Social Services\*

Reduced TANF Payments	\$0 to \$1,685,016	\$0 to \$1,685,016	\$0 to \$1,685,016
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Cost Avoidance - Department of Social Services\*

Applicants Not Approved	\$0 to 272,832	\$0 to 272,832	\$0 to 272,832
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<u>Costs</u> - Department of Mental Health Program Cost	(\$2,857,712 to \$8,153,288)	(\$2,857,712 to \$8,153,288)	(\$2,857,712 to \$8,153,288)
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<u>Costs</u> - Office of the Attorney General Program Costs	(Less than \$100,000)	(Less than \$100,000)	(Less than \$100,000)
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<u>Costs</u> - Department of Social Services			
Personal Service-DLS	(\$84,681)	(\$104,707)	(\$107,848)
Fringe Benefits-DLS	(\$44,407)	(\$54,908)	(\$56,556)
Equipment and Expense-DLS	(\$29,178)	(\$21,900)	(\$22,557)
<u>Total Costs</u> - DSS-DLS	<u>(\$158,266)</u>	<u>(\$181,515)</u>	<u>(\$186,961)</u>
FTE Change - DSS-DLS	2.8 FTE	2.8 FTE	2.8 FTE

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2011 (10 Mo.)	FY 2012	FY 2013
<u>Costs - Department of Social Services</u>			
FSD Drug Testing for Applicants	(\$2,698,870)	(\$3,337,138)	(\$3,437,252)
FSD Drug Testing for Recipients	(\$1,388,011)	(\$1,716,268)	(\$1,767,756)
FSD FAMIS Programming Costs	<u>(\$24,000)</u>	<u>\$0</u>	<u>\$0</u>
<u>Total Costs - DSS-FSD</u>	<u>(\$4,110,881)</u>	<u>(\$5,053,406)</u>	<u>(\$5,205,008)</u>
<b>ESTIMATED NET EFFECT ON GENERAL REVENUE FUND*</b>	<b><u>(\$5,269,011 to</u> <u>\$10,564,587)</u></b>	<b><u>(\$6,234,785 to</u> <u>\$11,530,361)</u></b>	<b><u>(\$6,391,833 to</u> <u>\$11,687,409)</u></b>
Estimated Net FTE Change for General Revenue Fund	2.8 FTE	2.8 FTE	2.8 FTE

\*Oversight used \$1,685,016 savings and \$272,832 cost avoidance in the net effect total.

## **FEDERAL FUNDS**

<u>Income - Department of Mental Health</u>			
Federal Assistance	\$5,120,900 to \$14,610,350	\$5,120,900 to \$14,610,350	\$5,120,900 to \$14,610,350
<u>Income - Department of Social Services- DLS</u>			
Federal Assistance	\$124,352	\$142,619	\$146,898
<u>Costs - Department of Mental Health</u>			
Program Costs	(\$5,120,900 to \$14,610,350)	(\$5,120,900 to \$14,610,350)	(\$5,120,900 to \$14,610,350)
<u>Costs - Department of Social Services- DLS</u>			
Personal Service	(\$66,535)	(\$82,270)	(\$84,738)
Fringe Benefits	(\$34,891)	(\$43,142)	(\$44,437)
Equipment and Expense	<u>(\$22,926)</u>	<u>(\$17,207)</u>	<u>(\$17,723)</u>
<u>Total Costs - DSS-DLS</u>	<u>(\$124,352)</u>	<u>(\$142,619)</u>	<u>(\$146,898)</u>
FTE Change - DSS-DLS	2.2 FTE	2.2 FTE	2.2 FTE



<u>FISCAL IMPACT - State Government</u> (continued)	FY 2011 (10 Mo.)	FY 2012	FY 2013
<b>ESTIMATED NET EFFECT ON FEDERAL FUNDS</b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>
Estimated Net FTE Change for Federal Fund	2.2 FTE	2.2 FTE	2.2 FTE
 <u>FISCAL IMPACT - Local Government</u>	 FY 2011 (10 Mo.)	 FY 2012	 FY 2013
	<b><u>\$0</u></b>	<b><u>\$0</u></b>	<b><u>\$0</u></b>

FISCAL IMPACT - Small Business

Most of the drugs testing facilities in the major metropolitan areas are small businesses and this legislation could have a significant positive impact on the number of drug tests each of those businesses would complete.

If the testing facilities were part of the state government, there would be no impact on small businesses.

FISCAL DESCRIPTION

**Section 208.027:**

This legislation requires the Department of Social Services to develop a program to test applicants or recipients of temporary assistance for needy families (TANF) benefits who are eligible for employment when a case worker believes, based on reasonable suspicion, that such person engages in illegal use of controlled substances. Any applicant or recipient who is found to have tested positive for the use of a controlled substance after an administrative hearing shall be declared ineligible for temporary assistance for needy families benefits for a period of three years from the date of the administrative hearing decision. The Department shall refer an applicant or recipient who tested positive for the use of a controlled substance under this legislation to an appropriate substance abuse treatment program approved by the Division of Alcohol and Drug Abuse within the Department of Mental Health. Also, if a parent is deemed ineligible for TANF benefits due to the provisions of this legislation, his or her dependent child's

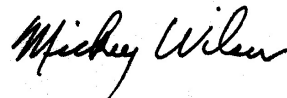
FISCAL DESCRIPTION (continued)

eligibility for such benefits shall not be affected and an appropriate protective payee may be established for the benefit of the child. The Department shall promulgate rules to develop the screening and testing provisions of this section.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Mental Health  
Department of Health and Senior Services  
Department of Social Services  
Office of the Secretary of State  
Office of the Attorney General  
Office of Administration-Administrative Hearing Commission



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Director  
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